

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

DUSTIN ISENHART, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 3:16-cv-00193
)	
NRT TECHNOLOGY CORP., <i>et al.</i> ,)	The Honorable Staci Y. Yandle
)	
Defendants.)	
)	

**DEFENDANTS’ MOTION FOR LEAVE TO SUBMIT
SUPPLEMENTAL AUTHORITY**

Defendants NRT Technology Corp. (“NRT”) and Tropicana Entertainment, Inc. (“Tropicana”) (collectively “Defendants”) respectfully request leave to submit supplemental authority in support of their Combined Motion to Dismiss Second Amended Complaint Pursuant to Rule 12(b)(1), (b)(2), (b)(3), and (b)(6) (“Motion to Dismiss”), pursuant to Local Rule 7.1(c). In support of this motion, Defendants state as follows:

1. On July 13, 2016, Defendants filed their Motion to Dismiss (Dkt. No. 49), arguing, in part, that Plaintiff does not have standing pursuant to the decision of the Supreme Court of the United States in *Spokeo v. Robins*, 136 S. Ct. 1550 (2016).

2. On September 8, 2016 the Eighth Circuit, in *Braitberg v. Charter Communs.*, No. 14-1737, 2016 U.S. App. LEXIS 16477, at *9 (8th Cir., Sept. 8, 2016), held that *Spokeo* requires a plaintiff to plead and prove an actual, existing injury in order to have standing to assert a statutory violation.

3. On September 14, 2016, the Court granted Defendants' leave to file a reply in to address the impact of the *Braitberg* decision, among others, on the Motion to Dismiss, (Dkt. 62), which Defendants filed on September 28, 2016. (Dkt. 64).

4. On September 30, 2016, Plaintiff filed a Motion for Hearing on the Motion to Dismiss, or in the Alternative, Leave to File a Supplemental Response Brief. (Dkt. 65). On October 6, 2016, the Court granted Plaintiff's Motion in part, setting the Motion to Dismiss for hearing on Wednesday, October 19, 2016 at 1:30 p.m. (Dkt. 66).

5. On October 6, 2016, Judge Gary A. Fenner of the United States District Court for Western District of Missouri issued a decision in *Thompson v. Rally House of Kansas City, Inc.*, Case No. 15-00886-CV-W-GAF (W. D. Mo. Oct. 6, 2016), dismissing a FACTA credit card receipt claim for lack of Article III standing. The decision is based in large part of the Eighth Circuit's reasoning in *Braitberg*, and is directly applicable to the allegations of the Second Amended Complaint.

6. Consequently, Defendants seek leave to submit the *Thompson* decision so the Court may benefit from this additional authority in considering the Motion to Dismiss.

WHEREFORE, Defendants NRT Technology Corp. and Tropicana Entertainment, Inc., respectfully request the Court enter an order granting them leave to submit supplemental authority in support of their Combined Motion to Dismiss Second Amended Complaint Pursuant to Rule 12(b)(1), (b)(2), (b)(3), and (b)(6), and granting such other and further relief as the court deems just and proper.

Respectfully submitted,

NRT TECHNOLOGY CORPORATION and
TROPICANA ENTERTAINMENT, INC.

By: s/Patrick T. Stanton

One of Their Attorneys

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CERTIFICATE OF SERVICE

I hereby certify that on October 13, 2016, I electronically filed the foregoing **Defendants' Motion for Leave to Submit Supplemental Authority** using the CM/ECF system which will send notification of such filing to all registered participants.

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